

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 8 2014

OFFICE OF
MANAGING DIRECTOR

Linda K. Bowers
Bowers Broadcasting Corp.
343 High Street
Morgantown, WV 26505

Licensee/Applicant: **Bowers Broadcasting Corp.**
Station: WCLG
Waiver Request: Late Payment Penalty; 47 U.S.C. §
159(c)(1); 47 C.F.R. § 1.1164
Disposition: Denied
Fee: Fiscal Year (FY) 2012 Regulatory Fee Late
Fees
Date Request Filed: Jun. 4, 2013
Date Regulatory Fees Paid: Jun. 21, 2013
Date Late Penalty Fees Paid: Jun. 21, 2013
Fee Control No.: RROG-12-00015237

Dear Ms. Bowers:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of Fiscal Year (FY) 2012 regulatory fees. For the reasons stated herein, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, our rule provides that "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31

¹ Email from Linda K. Bowers, Bowers Broadcasting Corp. (linda@wclg.com), to ARINQUIRIES, (ARINQUIRIES@fcc.gov)(Jun. 4, 2013)(*Request*).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁴ 47 C.F.R. § 1.1164.

U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, payment was due no later than September 13, 2012.⁵ We did not receive Licensee's payment by that deadline, thus we assessed the mandatory penalty, and when the debt remained delinquent, we assessed the additional charges. Indeed, Licensee made payment, which was received and credited on June 21, 2013, only after the Commission sent a final demand. Licensee requests a waiver of the penalty and charges of collection because "[Licensee] was unaware of the regulatory fees being due since [Licensee] received no notice[, and Licensee] called the FCC and found out [the FCC] no longer send[s] out statements or forms."⁶

When we evaluate such matters, we look to whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁷ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.⁸ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ..., pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."⁹ On July 31, 2009, the Commission released its order adopting these proposals,¹⁰ and notifying regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹¹ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹² Finally, on September 2, 2009, the Commission released a third public notice that **"HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC."**¹³

⁵ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁶ *Request*.

⁷ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

⁹ *Id.* at 5973, ¶ 20.

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹¹ *Id.* at 10309, ¶ 26.

¹² *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

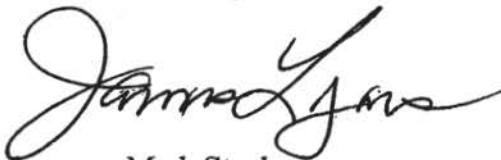
¹³ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

Similarly, in 2010, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment."¹⁴ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁵

Every licensee is obliged to pay the fee by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on inadvertent failure to follow the Commission's requirements or based on a particular passage of time after the deadline within which the regulatee satisfies its payment obligations. Indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period.¹⁶ Furthermore, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty it is to be waived, it is "only in the most extraordinary circumstances,"¹⁷ which Licensee did not establish. Moreover, the Commission has "reject[ed] the contention that the size of the penalty was disproportionate to the lateness. Congress mandated that an additional charge of 25 percent would be assessed as a penalty for all late payments of fees required by Section 9."¹⁸ Thus, we deny the *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



MSR: Mark Stephens
Chief Financial Officer

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁵ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

¹⁶ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

¹⁸ *In re NTT America, Inc.* 21 FCC Rcd 8088, 8090 (2006).